

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HP TUNERS, LLC, a Nevada limited liability)
company,

Plaintiff,

vs.

KEVIN SYKES-BONNETT and SYKED)
ECU TUNING INCORPORATED,
Washington corporation, and JOHN)
MARTINSON,

Defendants.

CASE NO. 3:17-cv-05760-JRC

DECLARATION OF KEITH PROCIUK
IN SUPPORT OF PLAINTIFF'S
RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT

I, KEITH PROCIUK, pursuant to 28 U.S.C. § 1746, being duly sworn according to law,
hereby state and declare as follows:

1. My name is Keith Prociuk. I am an individual over the age of 18 years. I have
personal knowledge of the matters set forth in my declaration and would be willing and able to
testify thereto if and when called upon to do so.

2. I am an owner of HP TUNERS, LLC.

1 3. At substantial expense, hard work and ingenuity over the course of many years
2 and thousands of man hours, HPT has developed complete, cost effective tuning and data
3 acquisition solutions for automobile enthusiasts and professional shops.

4 4. Over the years, HPT has carefully safeguarded its proprietary products, source
5 code and confidential and proprietary information in order to protect its trade secrets,
6 specifications and software.

7 5. HPT is a niche business, which provides complete, cost effective automotive
8 tuning and data acquisition solutions for enthusiasts and professional shops.

9 6. HPT's business includes but is not limited to computer hardware and software
10 designed for use in custom and/or pre-programmed engine and transmission tuning and
11 calibration applications for automobiles, trucks and other types of vehicles (including but not
12 limited to ATVs, snowmobiles and watercraft) (the "HP Tuners Business").

13 7. HPT has expended significant time, money and resources to develop the HP
14 Tuners Business, and HPT has created methods of business, strategies, programs and
15 technologies which did not exist in the industry prior to HPT's development of the HP Tuners
16 Business.

17 8. Over the years, HPT has invested a great deal of time and money in
18 developing its proprietary products and source code, and in building and growing the
19 HP Tuners Business.

20 9. HPT is constantly working to develop its products, source code and offerings, and
21 has devoted substantial time, money and resources to protect its confidential and proprietary
22 information, and to avoid efforts by third parties to pirate HPT's products and offerings.
23
24
25

1 10. HPT's confidential and proprietary software, source code, license key
2 generator and offerings have been developed and extensively refined by HPT at a
3 substantial cost and effort and constitute confidential information and valuable trade
4 secrets of HPT (collectively, the "Confidential Information").

5 11. HPT derives economic value from the fact that its Confidential Information
6 is not known outside of HPT's business and is not available through any public records and
7 information sources. HPT's Confidential Information cannot be independently developed by
8 its competitors without great effort and expense.

9 12. Recognizing the economic value that it derives from its Confidential
10 Information, as well as the potential value of this information to its competitors, HPT
11 requires that its Confidential Information be kept strictly confidential by its employees and
12 restricts access to this information. HPT has taken substantial steps and security measures to
13 protect the confidentiality of its Confidential Information, including but not limited to the
14 following:
15

- 16 a) HPT protects access to its Confidential Information through computer
17 passwords;
18 b) HPT protects to its Confidential Information through hard drive encryption
19 on all employee's computers;
20 c) HPT protects access to its Confidential Information through sophisticated
21 firewalls;
22 d) HPT protects distribution of Confidential Information through non-
23 compete and non-disclosure agreements;
24 e) HPT limits the number of employees having access to its Confidential
25

Information;

f) Employees are given access to HPT's Confidential Information on a "need to know" basis;

g) HPT does not give access to its Confidential Information to non-employees;

h) HPT employees are forbidden from copying, transferring or otherwise duplicating any of HPT's Confidential Information; and

i) HPT requires each employee to return to HPT all Confidential Information when the employee leaves HPT's employ.

13. Furthermore, HPT undertook reasonable measures to maintain the secrecy of its proprietary products, source code, software and offerings, including but not limited to entering into licensing agreements with protective clauses and installing security measures to prevent others from obtaining access and pirating HPT's confidential and proprietary products, source code, software and offerings.

14. HPT owned and possessed confidential and proprietary documents and data containing trade secrets, including but not limited to source code, the HPT proprietary key generator and MPVI communication protocol documents.

15. HPT's confidential and proprietary source code, proprietary key generator and MPVI communication protocol documents constitute information which has never been accessible to the public and HPT takes significant measures to protect this secrecy of this information.

16. Without authorization by HPT, a former owner of HPT, provided Defendants with copies of and access to confidential and proprietary information of HPT, including but not

1 limited to its confidential and proprietary source code, HPT's proprietary key generator and
2 MPVI communication protocol documents.

3 17. Much of the actual "work" in connection with the software takes place in the online
4 services source code (e.g. server code). Work is maintained in online services to protect it from
5 distribution. That work is secured because it is what is of value. The server code is where Defendants
6 likely have most of HPT's copied IP.

7 I hereby declare, under penalty of perjury, that all of the foregoing is true and accurate to
8 the best of my knowledge and belief.

9 Dated: September 2, 2019

10
11 
12 KEITH PROCIUK